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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,118	09/25/2006	Hans Kraemer	CB60414	3697
20462 7590 03/29/2010 GlaxoSmithKline GLOBAL PATENTS -US, UW2220 P. O. BOX 1539 KING OF PRUSSIA, PA 19406-0939				
EXAMINER				
SPISICH, MARK				
ART UNIT		PAPER NUMBER		
3727				
NOTIFICATION DATE		DELIVERY MODE		
03/29/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US\_cipkop@gsk.com

### Office Action Summary

**Application No.**

10/566,118

**Applicant(s)**

KRAEMER, HANS

**Examiner**

Mark Spisich

**Art Unit**

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 1/24/06 & 11/9/07

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of the invention of Group I (claims 1-11) in the reply filed on 17 February 2010 is acknowledged. The traversal is on the ground(s) that it does not comply with the PCT unity of invention standard. This is not found persuasive because, when looking at two groups of claims in a national stage/PCT application, one looks first to see if there is ANY common subject matter or so linked to form a single general inventive concept. Such is the case here. Secondly, one looks to whether this common subject matter constitutes a "special technical feature". This is not the case. The only common feature is the use of a gel material in which bristles are embedded, which is shown to not constitute a special technical feature in light of the prior art. Thirdly, the process claim 12 is an improper process claim anyway (there are no method or process steps). The real process begins in claim 13. Any comments regarding US restriction practice are moot in that 371 cases fall under the lack of unity PCT rules.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 12-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 17 February 2010.

***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: (1) Nos. 17,18 (as per page 12, line 21) and (2) No. 20A (as per page 15, line 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to because the labels "figure 2" and "figure 4" should be removed as there are no such figures per se (there are figures 2A-D and figures 4A-4F). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

5. The disclosure is objected to because of the following informalities: in the brief description of the drawings (page 12), the description of figures 2 and 4 should be amended to include the actual figures (2a-2d, etc.).

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claim 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Or polyurethane" (claim 9, line 4 and claim 10, line 3) lacks antecedent.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/001943 in view of Moskovich et al (US PUB 2004/0025275). '943 discloses a toothbrush head (30) comprising a rigid frame (36) supporting a mass of elastomeric material (60) (page 6, lines 6-14) in which a plurality of bristle tufts (66) are embedded. '275 is cited to show that the use of a gel material (28) (paragraph 0026) for a similar purpose as the material (60) in '943 is known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use such a gel material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Also note the conclusion of the international search report.

9. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moskovich et al (US PUB 2005/0188487) in view of Moskovich et al (US PUB 2004/0025275). '487 discloses a toothbrush head (14) comprising a rigid frame (20) within which is secured a mass of elastomeric material (22) in which a plurality of bristle tufts (26) are embedded. The choice of the particular material would, as described above, be obvious to one of ordinary skill in the art.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Blakeman is further pertinent to an elastomeric bristle supporting material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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